PUBLIC PROSECUTOR

v.

LIM CHENG CHOOI

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF MOHAMED J
[CRIMINAL TRIAL NO. 7 OF 1979]
2 MARCH 1982

CRIMINAL PROCEDURE: *Culpable homicide not amounting to murder - Charge - Intention - Circumstance of the offence - Causing death by negligence - Custodial sentence - Character of the accused - Public interest - Plea of guilty - Conviction on the amended charge.*

At the material time the accused was the Superintendent of Police in charge of EI Section of the Special Branch in Johore Bahru. On 1 May 1978 at about 9.20 a.m. when the accused was driving in the town of Johore Bahru, a motor car No. PD 6082, with 5-6 passengers in it squeezed through the narrow space between his car and the culvert at the edge of the road and in doing so grazed against the edge of the culvert. He looked back and saw the passengers in the car looking at him. Later when he stopped to buy newspapers, he noticed the same car was parked about 10 yards away, which aroused the accused's suspicion. The accused approached the car and while talking to the deceased he noticed the passengers appeared like construction workers, were looking hard at him. He suspected that they were communist elements and that they were after him.

The accused rushed home, collected his revolver and requested a Detective Corporal to accompany him to look for the said car in Johore Bahru town. On spotting the car, the accused followed by the Corporal approached the deceased. After identifying himself, he requested the deceased to accompany him to the Police Station. The accused was seen holding a revolver in his right hand. As the deceased refused to come out of the car, the accused opened the door of the car. Just then the deceased was seen lunging at the accused when a shot was discharged from the accused's revolver which struck the deceased. Immediately the accused with the aid of the Corporal took the deceased to the General Hospital. The deceased died as a result of the shot.

The accused was originally charged under s. 304 of the Penal Code. The defence was that the shot was not fired deliberately. It was discharged when the door of the car struck his right hand as the deceased charged at him. At the end of the trial the charge was amended to one under s. 304A of the Penal Code and the accused pleaded guilty to the amended charge.

Held:

[1] A charge under s. 304 of the Penal code will succeed only if the Court is satisfied beyond reasonable doubt that the accused while pointing the revolver at the deceased deliberately or accidentally pulled the trigger of the revolver. Lack of evidence to this effect took the offence out of s. 304, particularly when the evidence manifestly showed that the pulling of the trigger was not deliberate.

[2] Pulling of the trigger was not deliberate nor was the revolver deliberately aimed at the deceased. The shot was fired when the deceased lunged at the accused resulting in the accused involuntarily squeezing the trigger of the revolver.

[3] However, there was evidence of rashness on the part of the accused under the circumstances to warrant the amendment of the charge and the conviction and sentence under s. 304A under the Penal Code.

[4] Public interest may be best served if the highest morale of the Police Force as a whole is sustained. It would be contrary to public interest to impose a custodial sentence on the accused solely on one solitary occasion, he had been found to be rash in his act.

[5] Accused found guilty and convicted under s. 304A and fined RM2,000 or in default 3 months imprisonment.

Legislation referred to:
Penal Code, ss. 304, 304A

Public Prosecutor - DPP Ahmad Hj. Maarop
For the defendant - Tan Hock Kim

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Also found at [1982] CLJ 259